

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

Helen Johnson,

Plaintiff,

v.

Commissioner Carl Danberg,
First Correctional Medical
Services, Dr. Rogers, Warden
Thomas Carroll, Capt. C. Segars,
Unknown Named Correctional
Officers assigned building 19.

Defendants.

Civil Action No. 07 - 225

JURY TRIAL REQUESTED

COMPLAINT

COMES NOW the Plaintiff, Helen Johnson, administrator of the Estate of Jackie Johnson, and does hereby complain against the above-captioned Defendants as follows:

Jurisdiction and Venue

1. This action is brought, in part, pursuant to 42 U.S.C., Section 1983 for deprivation of plaintiff's constitutional civil rights; jurisdiction is therefore appropriate under 28 U.S.C. Sections 1331 and 1343. The claims asserted herein arose in the District of Delaware, and venue is therefore proper under 28 U.S.C. Section 1391(b);

2. Plaintiff Helen Johnson is the administrator of the Estate of Jackie Johnson;

3. Defendant Carl Danberg is , and for all time pertinent hereto, Commissioner of the Department of Correctional, State of Delaware;

4. First Correctional Medical Services, were contracting agency for State of Delaware and Department of Corrections to provide medical services for inmates housed under their jurisdiction;

5. Dr. Rodger is, and for all times pertinent hereto, was employee of First Correctional Medical Services, and assigned to Delaware Correctional Center;

6. Thomas Carroll, is and for all times pertinent hereto, warden, Delaware Correctional Center, Smyrna, Delaware;

7. C. Segars is, and for all times pertinent hereto, was employed as captain assigned security housing units, including building 19, Delaware Correctional Center;

8. Unknown, is and for all times pertinent hereto, officers assigned building 19 at Delaware Correctional Center;

9. Jackie Johnson died at the Delaware Correctional Center in Smyrna, Delaware on April 7, 2005.

10. At the time of his death, Jackie Johnson, who suffered with severe epileptic condition, housed in building 19 security housing unit ("SHU") were not constantly monitored. There was often shortage of staff in aforementioned unit.

11. Jackie Johnson, was serving life sentence for rape.

12. It was known by Dr. Rogers and First Correctional Medical, plaintiff Johnson had history of epileptic seizures and constantly falling-out, some of the aforementioned falls from top bunks.

13. The defendants, were all aware of history of plaintiff, informed by family member housed in same facility. Members of

family outside facility constantly calling in attempt to have plaintiff moved from security unit. The aforementioned due to failure of staff to constantly observe/monitor plaintiff.

14. There were several occasions plaintiff had seizure and laid on floors for hour at a time. Inmates assigned same area constantly kicked off their doors, to secure correctional staff's attention.

15. Correctional staff assigned this unit, often remained in area office for hours at time, playing computer games or on internet.

16. There wasn't any policy by department for housing inmates in security housing unit with severe medical problems. Inmates housed in this unit, remained in cell 23 hours per day.

17. The conditions in security housing unit much harsher than condition in general population.

18. Department never advise promptly of plaintiff's death, nor informed nature of death until May 16, 2005 after constantly calling office of medical examiner.

19. There were constant request by family to medical staff including (Dr. Rogers) assigned area, removed plaintiff from security housing unit. We were constantly informed security issue and there was nothing could do.

20 Department of Corrections staff, constantly informed various family members. The medical department had not stated need for deceased, by medical be removed from area.

21. There were constant request last being June, 2005 by family members to have incident investigated by Internal Affairs unit of the Department of Corrections. These request were ignored, informed wait until medical examiner's cause of death.

22. Todate, have several request too Office of the Medical Examiner, yet receive copy of autopsy report.

24, Defendants Department of Corrections, First Correctional Medical Services, Dr. Rogers, Warden Carroll, Capt. Segars, and unknowned named officers assigned building 19., and others knew Plaintiff faced a substantial risk of serious injury, the aforementioned and other were deliberately indifferent to the known risk of substantial injury.

25. Defendants deliberate indifference was a proximate cause cause of Plaintiff's death.

26. Defendants Department of Corrections, First Correctional Medical Services, failed to adequately train and supervise their employee, agents and other working on their behalf;

CAUSES OF ACTION

Count 1-26 U.S.C. Section 1983 & Eighth Amendment

27. Plaintiffs realleged and incorporated by reference each and every allegation in paragraphs 1 through 26;

28. Defendants, and each of them, acting under color or state law, violated Jackie Johnson's Eighth Amendment rights against cruel and unusual punishment by placing in administrative segregation with severe medical problem and failed too monitor;

Count2 - 42 U.S.C. 1983 & Eighth Amendment

29. The Defendants, in concert with each other and with other employees and/or agents of the Department of Corrections, conspired for the purpose of subjecting Mr. Johnson to cruel and unusual punishment in violation of his Eighth Amendment Rights;

30. The Defendants engaged in all of the overt acts alleged in this complaint, and other, in furtherance of the conspiracy;

31. The overt acts engaged in by the Defendants are evidence of an agreement among the Defendants and they were related to the promotion of the conspiracy.

Count 3 - 42 U.S.C. & 1986

32. The Defendants had knowledge that the wrongs conspired to be done were about to be committed by one or more of the other defendants and/or other employees or agents of the Department of Corrections;

Count 4 - Outrageous Conduct

33. Defendants failed in their duty to provide secure environment and standard of care to which Plaintiff was entitled.

WHEREFORE, Plaintiff demands a jury trial on the foregoing complaint and prays this Honorable Court to award the Estate damages, including punitive damages as justice requires.

Dated: April 20, 2007

Respectfully submitted,



HELEN JOHNSON
112 Parma Avenue
Overview Gardens
New Castle, DE 19720

UNITED STATES DISTRICT COURT

DISTRICT OF DELAWARE

Helen Johnson,

Plaintiff,

Commissioner Carl Danberg,
et al.

Defendants.

Civil Action No. _____

APPLICATION TO PROCEED
WITHOUT PREPAYMENT OF
FEES AND AFFIDAVIT

I, Helen Johnson declare that I am the plaintiff in the above-entitled proceeding: that in support of my request to proceed without prepayment of fees or cost under 28 U.S.C. 1915, I declare that I am unable to pay the cost of these proceedings and that I am entitled to the relief sought in sought in the complain.

1. 1. I am currently employed part-time

a. My rate of pay: \$9.78b. Name of employer and rate of pay: \$9.78DELAWARE SENIOR CENTER - 19 Lambson Lane, New Castle, DE ..

2. In the past 12 months have not received any money from below listed sources:

- a. Business, profession or self employment yes ☒ no
- b. Rent payment, interest or devidnends yes ☒ no
- c. Pensions, annuties or life insurance yes ☒ no
- d. Disability or worker compensation yes ☒ no
- e. Gifts or inheritances yes ☒ no
- f. Any other sources

3. Do you have cash or checking/checking or saving accounts

yes/no

4. Do you own any real estate, stock, bonds, securities, other financil instrutment, automobiles or other valuable property

yes ☒ no

4. Names of paerson denendent of me for support, and relationship. MRS. CARA R. JOHNSON - Mother

Braheem Wilson - Nephew

I declare under penalty of perjury that the above information is true and correct.

Helen Johnson
Helen Johnson

Affidavit

I, Andrew D. Johnson submits this affidavit on behalf of (deceased Brother) Jackie Johnson. On or about April 7, 2005 Jackie A. Johnson; while housed in Unit 19 (D/c Lower 4) S.H.U., was discovered dead.

I have spoken to several Residents that where housed in Unit 19 with the deceased and said Residents alerted security personnel to check on Jackie. The %'s upon checking on Jackie, realized he was dead. The names of these Residents, Affiant will submit to the Honorable Court when appropriate!

BASED ON the condition of the deceased, Affiant Learned that Jackie had been dead for approximately 16 hours, before discovered. According to the Institutions S.O.P, (Standard Operational Procedure) the %'s are suppose to check on all cells - Residents every 30 minutes. S.O.P, also requires that the officer making the rounds, make a phone punch. The phone punch consist of a few numbers being dialed which is recorded, confirming that an officer at least came on the tier for cell inspection.

For years prior to Jackie's death, Jackie informed Affiant that the prescribed medication was actually inducing the seizure's. Affiant assisted the deceased in the filing of countless medical grievances, about the effects of the medication. Affiant further assisted Jackie in the filing of complaints to the Commissioner (Stan Taylor), the Warden (Thomas Carroll and the former; Warden: Robert Snyder), all to no avail. Medical never addressed the issues that were raised in the grievances. The Commissioner, nor the Warden interceded to assist the deceased in acquiring the necessary medical treatment.

Affiant has written Medical and security personnel informing them I was Jackie's Brother and very much concerned! Medical AND security staff was Forwarded confirmation of Affiant being the deceased Brother but continued to ignore Affiant's plea to assist Jackie.

As Jackie's physical condition deteriorated he became easily agitated. Because of the daily seizures, the injuries sustained by the constantly falling from the Top bunk; Jackie's breathing made it difficult for him to walk without leaning on the wall(s). Despite Jackie's apparent illness the medical Department and security personnel continued to sanction Jackie being housed on the Top 'bunk. There are several Residents that were housed with Jackie who would testify about Him constantly falling from the top bunk.

The more Jackie insisted on being provided adequate medical treatment, the more security transferred him to the S.H.U. - Isolation. Transferring residents to the S.H.U. is a common practice for security in avoiding the addressing of a problem. More evidence of this assertion is that of Affiant. On or about 4-8-06 Affiant sent the Deputy Warden a letter, outlining a lot of the problems (Rapes, murders, thefts AND abuses) that has resulted here at D.C.C., because of the absence of a Housing criterion!!! Residents are wrecklessly housed, regardless of their mental, emotional or psychological state. Residents without mental illnesses are housed with those seriously disturbed and residents with a propensity for violence are housed with the most fragile.... In short, Affiant was arbitrarily moved to the S.H.U., despite no incident or a single write-up in 6 years ?? Check Affiant's File!

Because of Jackie's illness, he should not been housed where staff apparently was not paying attention to the Residents Locked in - down.

One time while housed in Unit 21, Jackie and I was housed on the same tier. In one week Jackie fell out the top bunk and busted his arm and head. He went to medical and was given a bandaid and returned back to the tier. I personally witnessed injuries Jackie suffered from the ~~se~~ seizures / falls. Institutional RECORDS can confirm that the two of us were housed together.

Jackie kept some records and names of those that denied him medical treatment but the Department took his paper-work during a shake down.

Another time while Jackie was housed in Unit 21 he had a ~~se~~ seizure and was placed in a wheel chair and put in the nurses station in Unit 21. I was currently employed as an E-crew (Janitor) and I stood right outside the nurses station and watched medical do nothing but set and steer at Jackie in the wheel chair? I didn't say he was my Brother because the policy prohibits residents from speaking to staff unauthorized, so after about ten minutes I motioned - gestured to one of the medical staff about rather he (Jackie) was alright. The nurse actually stepped out and told me that this guy always fall out but there is nothing they could do. Again, a check of the RECORD / file will show that AFFiant was employed as an E-crew worker while in Unit 21. I will provide the Courts with the nurses name at the appropriate time.

Affiant asserts that Jackies death was the direct Result of medicals - negligence. years of neglect by medical the wrong medication, coupled with the constant falls from 'the top Bunk; resulted in Jackies death. Unfortunately, the security staff to whom have no knowledge - experience are permitted to dictate to medical about a Residents level of treatment recieved this is preposterous.

I declare under the penalty of perjury that the above is true and correct to the best of my knowledge. I've painfully witnessed my Brother's deterioration over the past ten years, due to medical neglect. Jackie told me countless times about the shortness of breath, pains in his chest and that of numerous arguments with medical over issues.

Because of Jackie's failing health, Jackie's appetite would only permit him to eat once a day. We sat together during meals while - when housed on the same tier and I tried daily to encourage him to force the food down. The times he forced the food down by time he reached the cell, he was throwing the food back up!

Jackie was no physical threat and the average officer that worked around Jackie, could confirm that a slight push and he'll be on his butt! Jackie's condition necessitated a constant medical watch. ~~and~~ For security to place Jackie in Unit 19, where Residents only come out their cells ~~the~~ for an hour 3-times per week, was equivalent to a death sentence.

Jackie's death was not an isolated tragedy But a clear pattern, practiced of medical-security neglect. Death Certificate attached.

Date: 4-12-07


Notary

Andre D. Johnson
Andre D. Johnson #117593
Affiant's Signature
1181 Paddock Rd, D.C.C.
Smyrna, De. 19977

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS <u>Helen M. Johnson</u> (b) County of Residence of First Listed Plaintiff <u>New Castle</u> (EXCEPT IN U.S. PLAINTIFF CASES) (c) Attorney's (Firm Name, Address, and Telephone Number) <u>Helen M. Johnson</u> <u>112 PARK AVE., New Castle, DE. 19720</u> <u>(302) 655-2847</u>	DEFENDANTS <u>Commissioner Cal Danberg</u> <u>First Correctional Medical Services</u> <u>Warden Thomas Carroll - Capt. C. Sengert</u> <u>Unknown Officers - 344, 19</u> County of Residence of First Listed Defendant <u>New Castle</u> (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED. Attorneys (If Known)
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II. BASIS OF JURISDICTION (Place an "X" in One Box Only) <input type="checkbox"/> 1 U.S. Government Plaintiff <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant) (For Diversity Cases Only) <table style="width: 100%;"> <tr> <td style="width: 33%;">Citizen of This State</td> <td style="width: 33%;">RTF DEF</td> <td style="width: 33%;">Incorporated or Principal Place of Business In This State</td> </tr> <tr> <td><input checked="" type="checkbox"/> 1</td> <td><input type="checkbox"/> 1</td> <td><input type="checkbox"/> 4 <input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2 <input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> </tr> <tr> <td><input type="checkbox"/> 2 <input type="checkbox"/> 2</td> <td><input type="checkbox"/> 5 <input type="checkbox"/> 5</td> <td></td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3 <input type="checkbox"/> 3</td> <td>Foreign Nation</td> </tr> <tr> <td><input type="checkbox"/> 3 <input type="checkbox"/> 3</td> <td><input type="checkbox"/> 6 <input type="checkbox"/> 6</td> <td></td> </tr> </table>	Citizen of This State	RTF DEF	Incorporated or Principal Place of Business In This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	<input type="checkbox"/> 4 <input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2 <input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 2 <input type="checkbox"/> 2	<input type="checkbox"/> 5 <input type="checkbox"/> 5		Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3 <input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 3 <input type="checkbox"/> 3	<input type="checkbox"/> 6 <input type="checkbox"/> 6	
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IV. NATURE OF SUIT (Place an "X" in One Box Only)	
CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	TORTS PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input checked="" type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input checked="" type="checkbox"/> 440 Other Civil Rights
FORFEITURE/PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	

V. ORIGIN (Place an "X" in One Box Only) <input checked="" type="checkbox"/> 1 Original Proceeding <input type="checkbox"/> 2 Removed from State Court <input type="checkbox"/> 3 Remanded from Appellate Court <input type="checkbox"/> 4 Reinstated or Reopened <input type="checkbox"/> 5 Transferred from another district (specify) <input type="checkbox"/> 6 Multidistrict Litigation <input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment	Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): VI. CAUSE OF ACTION Brief description of cause: <u>BROTHER DIED FROM LACK OF MEDICAL ATTENTION</u>
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VII. REQUESTED IN COMPLAINT: <input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: <input type="checkbox"/> Yes <input type="checkbox"/> No	VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE DOCKET NUMBER
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DATE <u>4/27/07</u>	SIGNATURE OF ATTORNEY OF RECORD <u>Helen M. Johnson</u>
FOR OFFICE USE ONLY	

RECEIPT #	AMOUNT	APPLYING IFP	JUDGE	MAG. JUDGE
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AO FORM 85 RECEIPT (REV. 9/04)

United States District Court for the District of Delaware

Civil Action No. 7 - 225

ACKNOWLEDGMENT
OF RECEIPT FOR AO FORM 85

NOTICE OF AVAILABILITY OF A
UNITED STATES MAGISTRATE JUDGE
TO EXERCISE JURISDICTION

I HEREBY ACKNOWLEDGE RECEIPT OF 7 COPIES OF AO FORM 85.

4/28/07
(Date forms issued)

Helen M. Johnson
(Signature of Party or their Representative)

Helen M. Johnson
(Printed name of Party or their Representative)

Note: Completed receipt will be filed in the Civil Action